Federation of STATE MEDICAL BOARDS

June 22, 2015

The Honorable Orrin Hatch
United States Senate
104 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Johnny Isakson
United States Senate
131 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Mark Warner
United States Senate
475 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Hatch, Ranking Member Wyden, Senator Isakson, Senator Warner, and Members of the Senate Finance Committee Chronic Care Working Group:

On behalf of the Federation of State Medical Boards (FSMB), the national non-profit organization representing the 70 state medical and osteopathic boards of the United States and its territories, I am pleased to submit comments in response to the Working Group's solicitation for recommendations and policies to improve the delivery of health care to Medicare beneficiaries, especially those with chronic conditions. The FSMB's policy recommendations contained in this submission (specific to Categories 5, 6, and 7) will help facilitate multi-state medical practice, streamline care coordination, expand access to care, and enable telemedicine throughout the United States, while ensuring that state medical boards retain their regulatory authority for discipline and oversight within the system to protect all patients.

The Role of the FSMB in Support of Medical License Portability and Telemedicine

For more than 100 years, the FSMB has demonstrated its ability to assist state medical boards in adapting to each new wave of medical innovation while steadfastly fulfilling their role of public protection. A variety of factors - changing demographics, an aging population, the need for better and faster access to medical care, the passage of the *Affordable Care Act*, and the rise and use of telemedicine - have created circumstances in which it is important for organizations like the FSMB to explore new approaches to the issue of medical license portability.

Recognizing new approaches to providing quality care (beyond telemedicine and health care delivery models), the FSMB has assisted its member medical boards in mobilizing perhaps the fastest moving initiative in our history as an organization – a new pathway to expedite the licensing of qualified physicians seeking to practice medicine in multiple jurisdictions. The Interstate Medical Licensure Compact will offer an effective solution to the question of how best to balance patient safety and quality care with the needs of an expanding and evolving health care market.

Development of the Interstate Medical Licensure Compact

At the FSMB's Annual Meeting in 2013, *Resolution 13-5: Development of an Interstate Compact to Expedite Medical Licensure and Facilitate Multi-State Practice*, was unanimously adopted by our House of Delegates. The resolution directed the FSMB to convene representatives from state medical boards and special experts to aggressively study the development of an interstate compact model to facilitate medical license portability. By adopting *Resolution 13-5*, state medical boards

recognized the need to enhance a system of licensing that ensures physicians seeking to practice in multiple jurisdictions can do so efficiently and without unneeded burdens.

Since the founding of the United States, the U.S. Constitution's Compact Clause has allowed states to collectively work together to address an issue of shared interest. A compact exists simultaneously as a contract between contracting states and a stand-alone statute within state law. Interstate compacts have proven to be effective in addressing a wide variety of circumstances and issues that have multi-state impact.

The FSMB subsequently worked in conjunction with the Council of State Governments (CSG) and state medical board representatives to develop the initial compact framework. At the same time, the FSMB confirmed that its U.S. Department of Health and Human Services Health Resources and Services Administration (HRSA) license portability grant funds (awarded in September 2012) could be purposed for the Compact development initiative.

Representing a diverse collection of states - in terms of population, size, and geographic region - an appointed Compact Taskforce agreed to eight consensus principles to establish parameters for state participation in the Compact, and define key concepts for physicians and state medical boards:

1) Participation will be strictly voluntary for both physicians and states.
2) Generally, the Compact creates another pathway for licensure, but does not otherwise change a state's existing Medical Practice Act.
3) The practice of medicine occurs where the patient is located at the time of the physician-patient encounter and, therefore, requires the physician to be under the jurisdiction of the state medical board where the patient is located.
4) The Compact will establish a mechanism whereby any physician practicing in the state will be known by, and under the jurisdiction of, the state medical board where the practice of medicine occurs.
5) Regulatory authority will remain with the participating state medical boards, and will not be delegated to any entity that administers the Compact.
6) A physician practicing under the Compact is bound to comply with the statutes, rules and regulations of each Compact state wherein he/she chooses to practice.
7) State boards participating in the Compact are required to share complaint/investigative information with each other.
8) The license to practice medicine may be revoked by any or all of the Compact states.

Model Compact Legislation

For nearly a year, the Interstate Compact Drafting team solicited and considered feedback on various drafts of proposed legislative language for the model Compact from state medical boards, provider groups, telehealth organizations, and other interested stakeholders. The completed version of the model legislation for the Interstate Medical Licensure Compact was released for state consideration in September 2014.

The Interstate Medical Licensure Compact Process

The Compact pathway towards multi-state licensure is an adjunct, rather than a replacement, for the traditional licensure application process. A physician's use of the Compact process to obtain licensure in multiple jurisdictions will remain optional.

It is expected that this process will be expeditious for eligible physicians, given that a technical infrastructure will be in place for the Compact Commission (an administrative body, comprised of

representatives of the Compact member states) to support the rapid transfer and maintenance of licensing information. Complaint and disciplinary information will be shared between Compact states, greatly improving the ability of states to protect against the unsafe practice of medicine.

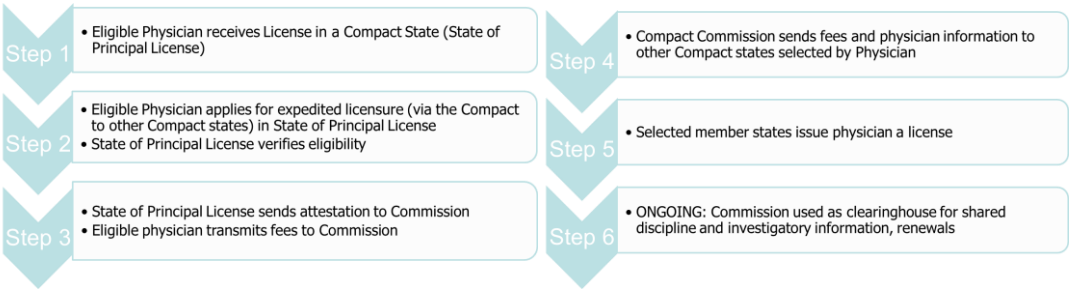
Initial surveys estimate that nearly **80% of the physician population licensed in the United States could be eligible** for expedited licensure via the Interstate Medical Licensure Compact.

To be eligible for expedited licensure via the Compact, physicians must:

- Possess a full and unrestricted license to practice medicine in a Compact state
- Possess specialty certification or be in possession of a time unlimited specialty certificate
- Have no discipline on any state medical license
- Have no discipline related to controlled substances
- Not be under investigation by any licensing or law enforcement agency
- Have passed the USMLE or COMLEX within 3 attempts
- Have successfully completed a graduate medical education (GME) program

Physicians who are ineligible for the expedited licensure process facilitated by the Compact will still be able to seek additional licenses in those states where they desire to practice, using traditional licensure processes.

Diagram of Licensure Process via the Interstate Medical Licensure Compact

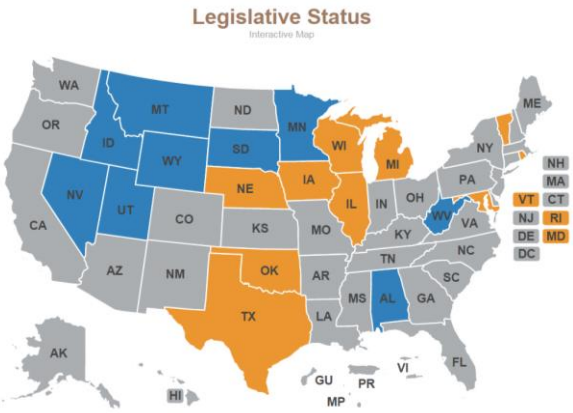


State Legislative Status of the Compact

Beginning in 2015, state legislatures began to formally consider the model Interstate Medical Licensure Compact legislation. **As of June 22, 2015, the Interstate Medical Licensure Compact has been enacted in nine states, including: Alabama, Idaho, Minnesota, Montana, Nevada, South Dakota, Utah, West Virginia, and Wyoming.** The Compact legislation is also currently on the desk of the Governors of Illinois and Iowa, awaiting signature.

The chamber floor votes of the enacted Compact member states are indicative of the broad, bi-partisan support for this state-based initiative. The Compact has passed State Houses with more than 97% and State Senates with more than 90% of legislators voting in favor of the Compact.

Throughout the 2015 state legislative session, the Compact was introduced in an additional eight state legislatures, including: Maryland, Michigan, Nebraska, Oklahoma, Rhode Island, Texas, Vermont, and Wisconsin. Though the majority of state legislative sessions adjourned by June, it is anticipated that the Compact will be introduced and/or enacted in several more states this year.



Blue State = Compact Enacted *Orange State = Compact Introduced*

The Compact has the support of nearly 30 state medical and osteopathic boards, as well as a number of hospitals, health systems, patient advocacy, and medical provider/specialty organizations across the nation.

By surpassing the minimum threshold of seven state enactments, the Compact is now officially established. This year, the Commission will determine the processes, rules and technical infrastructure necessary to facilitate the expedited licensing option available to qualified physicians in Compact member states. Additional Compact legislative introductions and enactments are expected in 2015 and beyond.

Growing Support for the Interstate Medical Licensure Compact

On January 9, 2014, a bi-partisan group of sixteen (16) U.S. Senators publicly commended state medical boards and the FSMB for their recent efforts to streamline the licensing process for physicians who wish to practice in multiple states – thus helping facilitate the use of telemedicine and increasing access to care throughout the United States. In the letter, the Senators noted that the proposed compact system retains important patient-protection advantages of the current state-based medical licensing process. "*We agree that allowing states to share information while allowing each state to retain jurisdiction over physicians who choose to practice in the state is in the best interest of both physicians and patients*," the letter said. The Senators noted that the new expedited licensure system would help ensure telemedicine is practiced in a "*safe and accountable manner*."

On May 21, 2015, the U.S. House Energy and Commerce Committee unanimously approved the *21st Century Cures Act*, a landmark bill that seeks to support medical innovation and improve the delivery of care. The legislation includes a "Sense of Congress" in support of state health board compacts to facilitate multi-state practice, license portability, and telemedicine, as well as recognizes that "*health care providers should be appropriately licensed in the physical location where the patient is receiving services*."

On February 26, 2014, Maureen K. Ohlhausen, Commissioner, Federal Trade Commission, before the Connecticut Bar Association Antitrust & Trade Regulation and Consumer Law Sections in Hartford, Connecticut, offered the following statement:

> *"In what I view as a positive development, a bipartisan group of sixteen U.S. Senators recently commended state medical boards and the Federation of State Medical Boards (FSMB) for their efforts to streamline the licensing process for physicians who wish to practice in multiple states. More specifically, the Senators applauded the boards' development of the Interstate Medical Licensure Compact (Compact), which would provide a new licensing option under*

which qualified physicians seeking to practice in multiple states would be eligible for expedited licensure in all states participating in the Compact, which would be voluntary, for both states and physicians. This Compact, while still in development, would appear to greatly facilitate the use of telemedicine while still allowing states to regulate medicine within their borders."

On September 5, 2014, Robert M. Wah, MD, now Immediate Past President, American Medical Association (AMA), released the following statement:

"The AMA has long supported reform of the state licensure process to reduce costs and expedite applications while protecting patient safety and promoting quality care. State-based licensure is an important tenet of accountability, ensuring that physicians are qualified through the review of their education, training, character, and professional and disciplinary histories…We applaud the FSMB for developing the interstate compact and other reforms designed to simplify and improve the licensure process for physicians practicing across state lines as well as providing telemedicine services in multiple states."

Other organizations that have voiced support for the Compact include: AARP, American Academy of Dermatology, American Academy of Pediatrics, American Academy of Neurology, American Well, Avera Health, Children's Hospital of Pittsburgh of UPMC, Gundersen Health System, Helmsley Charitable Trust Foundation, InSight Telepsychiatry, LocumTenens.com, Mayo Clinic, National Association Medical Staff Services, and Society of Hospital Medicine.

New Model Policy for Telemedicine Standard of Care

In 2014, the FSMB House of Delegates unanimously adopted the *Model Policy on the Appropriate Use of Telemedicine Technologies in the Practice of Medicine*, providing much-needed guidance and a basic roadmap that state medical boards can use in regulating the use of telemedicine technologies in the practice of medicine. The policy will also serve to educate licensees as to the appropriate standards of care in the delivery of medical services using telemedicine technologies.

Among its key provisions, the policy states that the same standards of care that have historically protected patients during in-person medical encounters must apply to medical care delivered electronically. Care providers using telemedicine must establish a credible "patient-physician relationship," ensuring that patients are properly evaluated and treated and that providers adhere to well-established principles guiding privacy and security of personal health information, informed consent, safe prescribing and other key areas of practice.

The guidelines are designed to provide flexibility in the use of technology by physicians – ranging from telephone and email interactions to videoconferencing – as long as they adhere to widely recognized standards of patient care. The guidelines are advisory, meaning that medical boards are free to adopt it as is, modify it, or retain their own current policies regarding telemedicine.

Concern with Legislation that Compromise State Medical Boards' Ability to Protect the Public

The FSMB would like to strongly convey its concern regarding federal legislative proposals that seek to: 1) implement a national medical licensure system; 2) expand state licensure exceptions (i.e. 'one-state license to practice nationwide' model); 3) waive state licensure requirements; or 4) redefine the practice of medicine as occurring at the location of the provider, rather than the patient. The FSMB believes that such proposals, though well-intentioned, would significantly undermine state boards' ability to protect their own citizens and discipline physicians for unprofessional conduct. These proposals would inadvertently create an inefficient system where each individual state board would be required to regulate medical practice across the nation.

The FSMB has regularly affirmed that the practice of medicine occurs where the patient is located, rather than where the provider is located. This patient-centered model is both time-tested and practice-proven, and is the nationwide standard that ensures that medical boards have the legal capacity and practical capability to regulate physicians treating patients within the borders of their state, and to attest that physicians meet the qualifications necessary to safely practice medicine.

The current fee structure of the state board licensing and renewal system allows state boards to use their limited resources to fund investigations and subsequent prosecutions of physicians suspected of unprofessional medical conduct. Some of the aforementioned proposed licensure models would create a significant and unsustainable financial burden on the state board where the physician is licensed, forcing the board to conduct its disciplinary proceedings and utilize their limited resources, at a much greater cost, to be able to conduct investigations in other states. Generally, state boards' legal authority does not expand beyond their state borders.

Each state determines its own licensing and medical practice standards that meet the individual needs of its citizens. Proposals to expand state licensure exceptions would compromise patient safety by making it less likely that improper or unprofessional care will be identified, properly reported to the state medical board of jurisdiction, and made subject of an investigation.

In the time-tested system of state-based medical licensure, patients and others may file a complaint with their own state medical board in the event of an adverse action by a physician. Proposed legislation that seeks to redefine the practice of medicine at the location of the provider, in the event of such an adverse action, would place the burden solely on the patient to navigate through the complaint filing and investigatory process (including identifying the state of licensure of the physician) across one or more state lines.

Recommendation

The FSMB sincerely hopes that the Senators who are serving on the Chronic Care Working Group will consider and support the efforts of states in adopting the Interstate Medical Licensure Compact. These efforts will expand access to care to senior citizens by facilitating multi-state practice and license portability, support the use of telemedicine, and ensure that state medical boards have the ability to protect the public through state-based licensure and regulation.

The Compact provides for the key component of regulation at the point of care – a fundamental principle of medical regulation that must remain in place – while dramatically streamlining the licensing process for qualified physicians who wish to practice in multiple states. It accomplishes the major goals that telemedicine advocates promote: faster licensure, reduced barriers, and a system that can be applied nationwide, creating an enhanced environment for multi-state practice.

The FSMB welcomes the opportunity to work with the Committee on this important issue, and commends your bi-partisan leadership. Please contact Jonathan Jagoda, Director of Federal Government Relations, at jjagoda@fsmb.org or 202-463-4003, should you have any questions.

Thank you.

Sincerely,

Humayun J. Chaudhry, DO, MACP
President and CEO